

STATE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

BOARD OF BEHAVIORAL SCIENCES

DISCIPLINARY GUIDELINES

Revised: February 6, 1997

ACKNOWLEDGEMENT

The Board of Behavioral Sciences wish to extend a special thank you to Jeanne W. Smith, Ph.D., Board Member, who contributed considerable time and effort toward the revision and publication of this document.

INTRODUCTION

The Board of Behavioral Sciences recognizes that these penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances may necessitate deviations. If there are deviations or omissions from the guidelines, the Board always appreciates it if the Administrative Law Judge hearing the case will include some explanation of this in the Proposed Decision so that the circumstances can be better understood by the Board during its review of the case for ultimate action.

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INDEX OF VIOLATIONS

B&P refers to the Business and Professions Code.
CCR refers to the California Code of Regulations.

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MFCC refers to the practice of Marriage, Family and Child Counseling.

LCSW refers to the practice of Licensed Clinical Social Work.

LEP refers to the practice of Licensed Educational Psychology.

GP refers to the general provisions of the Code, PC referred to Penal Code, W&I refers to Welfare & Institution Code

MFCC: B&P § 4980, 4980.02, 4980.40, 4980.46, 4982, 4982.1, 4982.25, 4982.26, CCR § 1833.1, 1845

LCSW: B&P § 4992.3, 4992.7, 4992.33, 4992.35, 4992.36, 4996, 4996.2, 4996.9, 4996.18, CCR § 1881

LEP: B&P § 4986.10, 4986.20, 4986.50, 4986.70, 4986.71, 4986.75, CCR § 1858, 1858(f)

GP: B&P § 119, 125, 141, 480, 490, 493, 496, 498, 499, 650, 651, 726, 728, 729, 810, 820, 821,

ALL: B&P § 125.3, 17500, CCR § 1811, PC 11166, W&I 9380, 15630

RECOMMENDED PENALTIES

SEXUAL CONTACT WITH CLIENT

MFCC: B&P § 4982.26
LCSW: B&P § 4992.33
LEP: B&P § 4986.71
GP: B&P § 729

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation / Denial of license or registration application; cost recovery (21).

SEXUAL MISCONDUCT WITH CLIENT -

(Anything other than as defined in B&P Section 729)

MFCC: B&P § 4982(k), 4982.26
LCSW: B&P § 4992.3(k), 4992.33, CCR § 1881(f)
LEP: B&P § 4986.71, CCR § 1858(h)
GP: B&P § 480, 726

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).
(See B&P 4982.26, 4986.71, 4992.33)

The Board considers this reprehensible offense to warrant revocation.

MINIMUM:

The Board may consider a lesser penalty if warranted by substantial evidence:

Revocation stayed; 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological evaluation, to implement any recommendations from that evaluation, and to successfully complete the required licensure examination as a condition precedent to resumption of practice as outlined in condition #16 (11); 7 years probation; standard terms and conditions (1-10); psychological evaluation as a condition precedent to resumption of practice (12); supervised practice (13); psychotherapy (14); education (15); take and pass licensure examination (16); reimbursement of probation program (23);

and if warranted: rehabilitation program (17); abstain from controlled substances/use of alcohol, submit to biological fluid testing and samples (18-19); restricted practice (20).

COMMISSION OF AN ACT PUNISHABLE AS A SEXUALLY RELATED CRIME

MFCC: B&P § 4982(k)
LCSW: B&P § 4992.3(k), CCR § 1881(f)
LEP: CCR § 1858(h)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological evaluation and to implement any recommendations from that evaluation (11); 5 years probation; standard terms and conditions (1-10); psychological evaluation as a condition precedent to the resumption of practice (12); supervised practice (13); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychotherapy (14); restricted practice (20).

IMPAIRED ABILITY TO FUNCTION SAFELY

MFCC: B&P § 4982(c), 4982.1
LCSW: B&P § 4992.3(c), 4992.35
LEP: B&P § 4986.70(c), 4986.75
GP: B&P § 480, 820

MAXIMUM: Revocation / Denial of license or registration application ; cost recovery (21).

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); supervised practice (13); cost recovery (21); reimbursement of probation program (23);

Terms and conditions of probation are commensurate with the individual condition.

MENTAL ILLNESS: Standard terms and conditions (1-10); psychological evaluation (12); psychotherapy (14);

PHYSICAL ILLNESS: Standard terms and conditions (1-10); (see new proposed term #24) physical evaluation (24);

SUBSTANCE ABUSE: Standard terms and conditions (1-10); psychological evaluation (12); psychotherapy (14); rehabilitation program (17); abstain from controlled substances/use of alcohol, submit to biological fluid tests and samples (18-19);

and if warranted: restricted practice (20).

USE OF DRUGS WITH CLIENT

MFCC: B&P § 4982(c), 4982.1
LCSW: B&P § 4992.3(c), 4992.35
LEP: B&P § 4986.70(c), 4986.75
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM:

The Board may consider a lesser penalty if warranted by substantial evidence:

Revocation stayed; 120-180 days minimum actual suspension and such additional time as may be necessary to obtain and review psychological evaluation and to implement any recommendations from that evaluation (11); 5 years probation; standard terms and conditions (1-10); psychological evaluation (12); supervised practice (13); education (15); rehabilitation program (17); abstain from controlled substances, submit to biological fluid test and samples (18); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychotherapy (14); restricted practice (20).

INTENTIONALLY / RECKLESSLY CAUSING HARM TO CLIENT

MFCC: B&P § 4982(i)
LCSW: B&P § 4992.3(i), CCR § 1881(d)
LEP: CCR § 1858(d)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); supervised practice (13); education (15); take and pass licensure exams (16); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychological evaluation (12); psychotherapy (14).

GROSS NEGLIGENCE / INCOMPETENCE

MFCC: B&P § 4982(d)
LCSW: B&P § 4992.3(d), CCR § 1881(m)
LEP: ---
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21) .

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); supervised practice (13); education (15); take and pass licensure exams (16); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychological evaluation (12); psychotherapy (14); rehabilitation program (17); abstain from controlled substances/use of alcohol, submit to biological fluid testing (18-19); restricted practice (20).

UNPROFESSIONAL CONDUCT

MFCC: B&P § 4982, CCR 1845
LCSW: B&P § 4992.3, CCR 1881
LEP: B&P § 4986.70, CCR 1858
GP: B&P § 125.6, 480, 821

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); supervised practice (13); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychological evaluation (12); psychotherapy (14); rehabilitation program (17); abstain from controlled substances/use of alcohol, submit to biological fluid testing (18-19); restricted practice (20).

FAILURE TO COMPLY WITH MANDATED REPORTING REQUIREMENTS:

MFCC: CCR § 1845(c)
LCSW: CCR § 1881(o)
LEP: CCR § 1858(o)
GP: B&P § 480
PC: 11166
W&I: 15630

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: (See next page)

FAILURE TO COMPLY WITH MANDATED REPORTING REQUIREMENTS: (continued)

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); supervised practice (13); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychological evaluation (12); psychotherapy (14); restricted practice (20).

CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO DUTIES AND FUNCTIONS OF A LICENSEE/REGISTRANT

MFCC: B&P § 4980.40(h), 4982(a)
LCSW: B&P § 4992.3(a), 4996.2(d), 4996.18(a)
LEP: B&P § 4986.20(c), 4986.70(a)
GP: B&P § 480, 490, 493

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60 days actual suspension (11); 5 years probation; supervised practice (13); education (15); cost recovery (21); reimbursement of probation program (23);

Terms and conditions of probation depend on the nature of the criminal offense.

CRIMES AGAINST PEOPLE: standard terms and conditions (1-10); psychological evaluation (12); psychotherapy (14); restitution (22);

DRUGS AND ALCOHOL: standard terms and conditions (1-10); psychological evaluation (12); psychotherapy (14); rehabilitation program (17); abstain from controlled substances/use of alcohol, submit to biological fluid testing (18-19);

FISCAL AND PROPERTY CRIMES: standard terms and conditions (1-10);

and if warranted: psychotherapy (14); take and pass licensure exams (16); rehabilitation program (17); abstain from controlled substances/submit to biological fluid testing (18), abstain from use of alcohol/submit to biological fluid testing (19); restricted practice (20).

COMMISSION OF DISHONEST / FRAUDULENT ACT RELATED TO DUTIES AND FUNCTIONS OF LICENSE

MFCC: B&P § 4982(j)
LCSW: B&P § 4992.3(j), CCR § 1881(e)
LEP: B&P § 4986.70(f), CCR § 1858(e)
GP: B&P § 480, 650, 810

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60 days actual suspension (1); 5 years probation; standard terms and conditions (1-10); supervised practice (13); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: psychological evaluation (12); psychotherapy (14); restricted practice (20).

PERFORMING, OFFERING TO PERFORM, PERMITTING TO PERFORM BEYOND SCOPE OF LICENSE

MFCC: B&P § 4980.02, 4982(l), 4982(s), 4982(t), CCR § 1845(a), 1845(b)
LCSW: B&P § 4992.3(l), 4996.9, CCR § 1881(g), 1881(h)
LEP: B&P § 4986.10, CCR § 1858(i), 1858(j)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 30-60 days actual suspension (11); 3-5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (22);

and if warranted: psychological evaluation (12); supervised practice (13); psychotherapy (14); take and pass licensure exams (16); restricted practice (20).

DISCIPLINE BY ANOTHER STATE OR BY CALIFORNIA AGAINST A CORRESPONDING LICENSE

MFCC: B&P § 4982.25
LCSW: B&P § 4992.36
LEP: ---
GP: B&P § 141, 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Determine the appropriate penalty, by comparing the violation under the other state with California law.

and if warranted: take and pass licensure exams (16) as a condition precedent to practice.

SECURING OR ATTEMPTING TO SECURE A LICENSE BY FRAUD

MFCC: B&P § 4982(b)
LCSW: B&P § 4992.3(b), 4992.7
LEP: B&P § 4986.70(b)
GP: B&P § 480, 498, 499

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MISREPRESENTATION OF LICENSE / QUALIFICATIONS

MFCC: B&P § 4980, 4982(f), CCR § 1845(a), 1845(b)
LCSW: B&P § 4992.3(f), 4996, CCR § 1881(a)
LEP: B&P § 4986.50, CCR § 1858(a), 1858(g)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60 days actual suspension (11); 3-5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: take and pass licensure exams (16).

VIOLATES EXAM SECURITY

MFCC: B&P § 4982(q)
LCSW: B&P § 4992.3(q), CCR § 1881(l)
LEP: CCR § 1858(n)
GP: B&P § 123, 480, 496

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

IMPERSONATING LICENSEE / ALLOWING IMPERSONATION

MFCC: B&P § 4982(g)
LCSW: B&P § 4992.3(g), 4992.7, CCR § 1881(b)
LEP: CCR § 1858(b), 1858(g)
GP: B&P § 119, 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 5 years probation; supervised practice (13); standard terms and conditions (1-10); psychological evaluation (12); psychotherapy (14); cost recovery (21); reimbursement of probation program (23)

AIDING AND ABETTING UNLICENSED / UNREGISTERED ACTIVITY

MFCC: B&P § 4982(h)
LCSW: B&P § 4992.3(h), CCR § 1881(c)
LEP: CCR § 1858(c)
GP: B&P § 125, 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 30-90 days actual suspension (11); 3-5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23).

and if warranted: supervised practice (12).

FAILURE TO MAINTAIN CONFIDENTIALITY

MFCC: B&P § 4982(m)
LCSW: B&P § 4992.3(m), CCR § 1881(i)
LEP: CCR § 1858(k)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 60-90 days actual suspension (11); 3-5 years probation; standard terms and conditions (1-10); education (15); take and pass licensure exams (16); cost recovery (21); reimbursement of probation program (23).

FAILS TO PROVIDE SEXUAL MISCONDUCT BROCHURE

MFCC: B&P § 728
LCSW: B&P § 728
LEP: ---
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; 3-5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23).

IMPROPER SUPERVISION OF TRAINEE / INTERN / ASSOCIATE/ SUPERVISEE

MFCC: B&P § 4982(r), 4982(t), 4982(u), CCR § 1833.1, 1845(b)
LCSW: B&P § 4992.3(r), CCR § 1881(h)
LEP: CCR § 1858(j)

MAXIMUM: Revocation; cost recovery (22).

MINIMUM: Revocation stayed; 30-90 days actual suspension (11); 2 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

and if warranted: supervised practice (13).

VIOLATIONS BY REGISTRANTS / APPLICANTS ACQUIRING HOURS OF EXPERIENCE

MFCC: B&P § 4982(e), 4982(u)
LCSW: B&P § 4992.3(e)
LEP: B&P § 4986.70(e)
GP: B&P § 480

MAXIMUM: Revocation / Denial of license or registration application; cost recovery (21).

MINIMUM: Revocation stayed; registration on probation until exams are passed and license issued; license issued on probation for one year; rejection of all illegally acquired hours; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23).

FAILURE TO DISCLOSE FEES IN ADVANCE

MFCC: B&P § 4982(n)
LCSW: B&P § 4992.3(n), CCR § 1881(j)
LEP: CCR § 1858(l)

MAXIMUM: Revocation stayed; 30 days actual suspension (11); 2 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

MINIMUM: Revocation stayed; 1 year probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23)..

PAY, ACCEPT, SOLICIT FEE FOR REFERRALS

MFCC: B&P § 4982(o)
LCSW: B&P § 4992.3(o), CCR § 1881(n)
LEP: ---

MAXIMUM: Revocation stayed; 90-120 days actual suspension (11); 3-5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

MINIMUM: Revocation stayed; 3 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

FALSE / MISLEADING ADVERTISING

MFCC: B&P § 4980.46, 4982(p)
LCSW: B&P § 4992.3(p), CCR § 1881(k)
LEP: B&P § 4986.70(d), CCR § 1858(m)
ALL: 16 CCR § 1811
GP: B&P § 480, 651, 17500

MAXIMUM: Revocation stayed; 30-60 days actual suspension (11); 5 years probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23);

MINIMUM: Revocation stayed; 1 year probation; standard terms and conditions (1-10); education (15); cost recovery (21); reimbursement of probation program (23)..

PROBATION CONDITIONS

Probation conditions are divided into two categories: 1) Standard Conditions that generally appear in all probation cases; and 2) Optional Conditions that depend on the nature and circumstances of the particular case.

In addition to the Standard Probation conditions required in minimum penalties, any of the optional conditions may also be imposed.

STANDARD PROBATION CONDITIONS

The nine standard conditions generally appearing in every probation case are as follows:

1. Obey all laws [1]
2. File quarterly reports [2]
3. Comply with probation program [3]
4. Interviews with the Board [4]
5. Tolling of probation [5]
6. Change of place of employment or place of residence [6]
7. Supervision of unlicensed persons [7]
8. Notification to clients [8]
9. Notification to Employer [9]
10. Violation of probation [10]

The bracket number [#] refers to the number of the standard condition spelled out in full as follows on the next page.

Specific Language for Standard Conditions of Probation
(To be included in all Decisions)

1. Obey all Laws

Respondent shall obey all federal, state and local laws, and obey all statutes and regulations governing the licensee. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

2. File Quarterly Reports

Respondent shall submit quarterly reports as scheduled on the "Quarterly Report Form" (original, no revision date) required by the Board to the Board or its designee. Respondent shall state under penalty of perjury whether there has been compliance with all the conditions of probation.

3. Comply with Probation Program

Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the program.

4. Interviews with the Board

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

5. Tolling of Probation

Respondent shall notify the Board in writing within 10 days if respondent leaves California to reside or practice in another state. The written notice to the Board or its designee shall include the dates of departure from California and return. Respondent shall notify the Board within 10 days upon return to California. The period of probation shall not run during the time respondent is residing or practicing outside of California

Respondent shall notify the Board in writing, within 10 days, of any leave of absence from the practice of _____ in California. The written notice to the Board or its designee shall include the beginning and ending dates of such leave of practice. Respondent shall notify the Board within 10 days prior to resumption of practice in California. The period of probation shall not run during the time respondent takes a leave of absence from practice for more than twelve consecutive weeks.

STANDARD CONDITIONS - continued

6. Change of Place of Employment or Place of Residence

Respondent shall notify the Board or its designee in writing within 30 days of any change of place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

7. Supervision of Unlicensed Persons

While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

8. Notification to Clients

Respondent shall notify all current and potential clients of any term or condition of probation which will affect their therapy or the confidentiality of their records. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

9. Notification to Employer

Respondent shall notify all current and potential employers of any term or condition of probation which will affect their employment. Respondent shall provide a copy of the decision to each employer during the length of probation. Such notification shall be signed by each employer. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

10. Violation of Probation

If respondent violates the conditions of his/her probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation/suspension) of Respondent's license [or registration] provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license [or registration] shall be fully restored.

OPTIONAL CONDITIONS

Depending on the nature and circumstances of the case, the optional condition(s) that may appear are as follows:

11. Actual suspension [11]
12. Psychological evaluation [12]
13. Supervision of respondent's practice [13]
14. Psychotherapy [14]
15. Education [15]
16. Take and pass licensure examinations [16]
17. Rehabilitation Program [17]
18. Abstain from Controlled Substances/Submit to Biological Fluid Testing and Samples [18]
19. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples [19]
20. Restricted practice [20]
21. Cost recovery [21]
22. Restitution [22]
23. Reimbursement of probation program [23]
24. Physical Evaluation [24]

The bracket number [#] refers to the number of the optional condition spelled out in full below.

11. Actual Suspension

- A. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ for a period of ____ days.

or

- B. Commencing from the effective date of this decision, respondent shall be suspended from the practice of _____ -
_____ for a period of ____ days, and such additional time as may be necessary to obtain and review psychological evaluation, to implement any recommendations from that evaluation, and to successfully complete the required oral or written licensure examination as a condition precedent to resumption of practice as outlined in condition #__ (Take and pass licensure examinations).

OPTIONAL CONDITIONS - continued

12. Psychological Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a psychological evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such evaluator shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the evaluator to release all information to the Board. Respondent shall comply with the recommendations of the evaluator. If a psychological evaluation indicates a need for supervised practice, (within 30 days of notification by the Board) respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

13. Supervision of Respondent's Practice

Within 30 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent. Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records.

[Optional - Respondent shall not practice until he/she has received notification that the Board has approved respondent's supervisor.] If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

OPTIONAL CONDITIONS - continued

14. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by respondent.

Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, nor shall the psychotherapist be the respondent's supervisor. Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three (3) working days. Upon notification by the Board, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

15. Education

Respondent shall take and successfully complete the equivalency of _____ semester units in each of the following areas _____. All course work shall be taken at the graduate level at an accredited educational institution. Classroom attendance must be specifically required; workshops are not acceptable. Course content shall be pertinent to the violation and all course work must be completed within _____.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent.

16. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. The exam(s) shall be taken on regularly scheduled dates. Respondent shall pay the established examination fees. If respondent has not taken and passed the examination within twelve months from the effective date of this decision, respondent shall be considered to be in violation of probation.

OPTIONAL CONDITIONS - continued

17. Rehabilitation Program

Within fifteen (15) days from the effective date of the decision, respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter a rehabilitation and monitoring program within fifteen (15) days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by the respondent.

18. Abstain from Controlled Substances / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. Respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee.

There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to respondent's current employer and shall be a violation of probation.

19. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples

Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. The length of time and frequency will be determined by the Board. The respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board or its designee.

There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the Respondent's current employer and shall be a violation of probation.

20. Restricted Practice

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

OPTIONAL CONDITIONS - continued

21. Cost Recovery

Respondent shall pay the Board \$ ____ as and for the reasonable costs of the investigation and prosecution of Case No. _____. Respondent shall make such payments as follows: [Outline payment schedule.] Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. _____. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation.

22. Restitution

Within 90 days of the effective date of this decision, respondent shall provide proof to the Board or its designee of restitution in the amount of \$ ____ paid to ____.

23. Reimbursement of Probation Program

Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

24. Physical Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall complete a physical evaluation by such license physicians as are appointed by the Board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the Board or its designee regarding respondent's judgment and ability to function independently and safely as a counselor and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, respondent shall submit to the Board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board or its designee has notified the respondent of its determination that respondent may resume practice.

ACCUSATIONS

The Board of Behavioral Sciences (BBS) has the authority pursuant to Section 125.3 of the Business and Professions Code to recover costs of investigation and prosecution of its cases. The BBS requests that this fact be included in the pleading and made part of the accusation.

STATEMENT OF ISSUES

The BBS will file a Statement of Issues to deny an application of a candidate for the commission of an act which if committed by a licensee would be cause for license discipline.

STIPULATED SETTLEMENTS

The BBS will consider entering into stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to settlement with the BBS, he or she may be required to admit to the violations set forth in the Accusation. The Deputy Attorney General must accompany all proposed stipulations submitted with a memo addressed to BBS members explaining the background of the case, defining the allegations, mitigating circumstances, admissions, and proposed penalty along with a recommendation.

RECOMMENDED LANGUAGE FOR LICENSE SURRENDERS

"Admission(s) made in the stipulation are made solely for the purpose of resolving the charges in the pending accusation, and may not be used in any other legal proceedings, actions or forms, except as provided in the stipulation.

The admissions made in this stipulation shall have no legal effect in whole or in part if the Board does not adopt the stipulation as its decision and order.

Respondent fully understands that when the Board adopts the license surrender of respondent's license, respondent will no longer be permitted to practice as a _____ in California. Respondent further understands that the license surrender of his or her license, upon adoption, shall be considered to be a disciplinary action and shall become a part of Respondent's license history with the Board.

The respondent further agrees that with the adoption by the Board of his or her license surrender, respondent may not petition the Board for reinstatement of the surrendered license.

Should respondent at any time after this surrender ever reapply to the Board for licensure, respondent must meet all current requirements for licensure including, but not limited, to filing a current application, meeting all current educational requirements, and taking and passing any and all written and oral examinations required of new applicants.

Respondent understands that should he or she ever reapply for licensure as a _____ or should he or she ever apply for any other registration or licensure issued by the Board, or by the Board of Psychology, all of the charges contained in Accusation No. _____ shall be deemed admitted for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication."

PROPOSED DECISIONS

The BBS requests that proposed decisions include the following if applicable:

- A. Names and addresses of all parties to the action.
- B. Specific Code section violated with the definition of the code in the Determination of Issues.
- C. Clear description of the acts or omissions that constitute a violation.
- D. Respondent's explanation of the violation in the Findings of fact if he or she is present at the hearing.
- E. Explanation for deviation from BBS' Disciplinary Guidelines.

When a probation order is imposed, the BBS requests that the Order first list the Standard Terms and Conditions (1-9) followed by the Optional Terms and Conditions as they may pertain to the particular case. If the respondent fails to appear for his or her scheduled hearing or does not submit a notice of defense, such inaction shall result in a default decision to revoke licensure or deny application.

REINSTATEMENT/REDUCTION OF PENALTY HEARINGS

The primary concerns of the BBS at reinstatement or penalty relief hearings are (1) the Rehabilitation Criteria for Suspensions or Revocations identified in Title 16, California Code of Regulations Section 1814, and (2) the evidence presented by the petitioner of his or her rehabilitation. The Board is not interested in retrying the original revocation or probation case. The BBS shall consider, pursuant to Section 1814, the following criteria of rehabilitation:

- "(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.
- (2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for suspension or revocation under Section 490 of the Code.
- (3) The time that has elapsed since commission of the acts or crimes giving rise to the suspension or revocation.
- (4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent, or immaterial.
- (7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.
- (8) Evidence, if any, of rehabilitation submitted by the licensee.

REINSTATEMENT/REDUCTION OF PENALTY HEARINGS - continued

In the Petition Decision the BBS requires a summary of the offense and the specific codes violated which resulted in the revocation, surrender, or probation of the license.

In petitioning for Reinstatement or Reduction of Penalty under Business and Professions Code Section 4982.2, the petitioner has the burden of demonstrating that he or she has the necessary and current qualifications and skills to safely engage in the practice of marriage, family and child counseling, clinical social work, or educational psychology within the scope of current law, and accepted standards of practice. In reaching its determination, the Board considers various factors including the following:

- A. The original violations for which action was taken against the petitioner's license;
- B. Prior disciplinary and criminal actions taken against the petitioner by the Board, any State, local, or Federal agency or court;
- C. The petitioner's attitude toward his or her commission of the original violations and his or her attitude in regard to compliance with legal sanctions and rehabilitative efforts;
- D. The petitioner's documented rehabilitative efforts;
- E. Assessment of the petitioner's rehabilitative and corrective efforts;
- F. In addition, the Board may consider other appropriate and relevant matters not reflected above.

If the BBS should deny a request for reinstatement of a revoked license or reduction of penalty (modification or termination of probation), the BBS requests the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such proceeding shall go forth without the petitioner's presence and the Board will issue a decision based on the written evidence and oral presentations submitted.